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15 **Attorney for Defendant**

16 **SJPD Officer Bret Moiseff**

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22 **Attorneys for Defendant**

CITY OF SANTA CLARA, STEVE BURRESS,

23 **CRAIG MIDDLEKAUFF, NICK RICHARDS,**

CHIEF STEPHEN LODGE

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT,
SAN FRANCISCO DIVISION

VICTOR VELASQUEZ,

Plaintiff,

vs.

CITY OF SANTA CLARA & ITS
POLICE DEPARTMENT, A
municipal corporation; STEVE
BURRESS, an individual; CRAIG
MIDDLEKAUFF, an individual; NICK
RICHARDS, an individual; CHIEF
STEPHEN LODGE, an individual as
DOE 1; OFFICER BRET MOISEFF,
an individual as DOE 2;
COMMANDER ROBERT MECIR, an
individual as DOE 3; and DOES 4 to
50, inclusive,

Defendants.

Case No. 11-CV-03588-YGR

**FIRST AMENDED JOINT CASE
MANAGEMENT CONFERENCE
STATEMENT-REQUESTED IN 01/18/12
REASSIGNMENT ORDER**

Judge Yvonne Gonzales Rogers

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court adopt it as its Case Management Order.

1. Date Case Filed:

The original lawsuit was filed September 21, 2009 in Santa Clara County Superior Court. The matter was removed removal to federal court on or about July 21, 2011.

2. List or Description of All Parties:

Plaintiff Victor Velasquez;

Defendant City of Santa Clara and its police officers Steve Burress, Greg Middlekauff and Nick Richards;

Defendant former City of Santa Clara police Chief Stephen Lodge;

City of San Jose police officer Bret Moiseff; and

Commander Robert Mecir has been voluntary dismissed from this lawsuit by plaintiff.

1 **3. Current Deadlines:**

2 There is no trial date. There are no deadlines or cutoffs. There are no pending
3 motions.

4 The parties did select early neutral evaluation as the appropriate ADR process. On
5 October 21, 2011 the parties requested 180 days from the date of the order referring the
6 matter to early neutral evaluation. No neutral evaluator was ever selected nor was the
7 early neutral evaluation ever scheduled.

8 There has not been a case management conference since the matter was removed
9 to federal court.

10 **4. Pending Motions:**

11 No motions are pending. There are no briefs, motions or events of any sort pending.

12 Defendant Moiseff anticipates filing a summary judgment motion depending upon the
13 facts/evidence developed in discovery. It is anticipated this motion would not be filed until
14 discovery is completed. The primary basis on a motion for summary judgment would be
15 qualified immunity.

16 **5. Brief Description of Underlying Action:**

17 Early in the year 2008, plaintiff was arrested and released after posting bail.
18 Thereafter, he missed his criminal court appearance. A bail bond agent was looking for
19 him as were various law enforcement agencies. The law enforcement agencies received
20 information that he was staying at a hotel in San Jose.

21 On June 20, 2008, plaintiff exited the hotel. Officers were staking out the hotel.
22 Plaintiff walked to his vehicle and as he was about to get into his vehicle he was
23 approached by police officers with guns drawn. Versions differ as to what happened at
24 this point. It is not disputed that plaintiff entered his vehicle and was shot.

25 Plaintiff alleges that he was shot while his hands were raised over his head in
26 surrender. Plaintiff maintains he was unarmed and presented no danger to law
27 enforcement. Nevertheless, defendant officers Burrese, Middlekauff and Richards fired
28

1 numerous rounds through plaintiff's vehicle striking him on a number of occasions in
2 numerous places. No weapons were found on plaintiff's person or in his vehicle.

3 Defendants maintain that plaintiff ignored numerous verbal commands directing him
4 to put his hands up. Plaintiff entered his vehicle and attempted to flee. No weapons were
5 found on his person.

6 **6. Summary of Claims:**

7 Plaintiff alleges violations of due process under the fourth amendment (unreasonable
8 search and seizure) of the United States Constitution based upon excessive force.

9 Plaintiff also sets forth a Monell claim. Plaintiff sets forth state tort law claims for battery,
10 assault, negligence, intentional infliction of emotional distress as well has violations of
11 California Civil Code Sections 51.7 and 52.1.

12 **7. List and Description of Relief Sought and Damages Claimed:**

13 Plaintiff seeks damages for personal injuries receiving numerous gunshot wounds as
14 a result of the subject incident. Plaintiff received extensive medical treatment. Plaintiff
15 has permanent injuries.

16 Plaintiff seeks general damages.

17 Plaintiff seeks statutory penalties under California Civil Code Section 52 pursuant to
18 Section 52.1.

19 Plaintiff seeks punitive damages against the individual defendants.

20 Plaintiff seeks all applicable attorneys fees under both federal and state law.

21 Plaintiff seeks injunctive relief.

22 Plaintiff's damages are calculated based upon lost future wages arising out of his
23 injuries, medical costs, property damage, pain and suffering and emotional distress.
24 Medical damages will be calculated using medical records from Valley Medical and the
25 facilities where he has been incarcerated. Property damage will be based upon lay
26 testimony and possibly expert testimony on the value of the vehicle and lay testimony
27 about the property in his possession at the time of battery and subsequent arrest that was
28 not returned. Future wage damages will be computed with the use of an expert in

1 economics; medical experts will be used to provide evidence of physical injuries, physical
 2 therapy and on going treatment for arm and neck injuries; and psychological/post
 3 traumatic stress disorder experts will be used for emotional distress damages and on
 4 going post traumatic stress disorder associated with the battery.

5 **8. Status of Discovery:**

6 The parties have responded to written discovery consisting of interrogatories and
 7 document demands.

8 Plaintiff has deposed defendants Middlekauff and Richards from the Santa Clara
 9 Police Department. San Jose PD officer Bret Moiseff and Sean Pritchard have also been
 10 deposed.

11 Plaintiff's medical records have been subpoenaed.

12 Plaintiff has not been deposed and is still in a Men's Colony in San Luis Obispo.

13 As discovery has been stayed following removal to federal court, there are no
 14 depositions or other discovery pending.

15 **9. Procedural History:**

16 No motions have been decided. There has been no ADR. The parties agree to early
 17 neutral evaluation. There have been no settlement conferences. There have been no
 18 appellate proceedings.

19 **10. Immediate Need for Case Management Conference:**

20 There is a stipulation and order before the court to stay the matter for 45 days.

21
 22 DATED: January 27, 2012

KALLIS AND ASSOCIATES

23 By: /s/ JEFFERY KALLIS

24 JEFFERY KALLIS
 Attorneys for Plaintiff
 VICTOR VELASQUEZ

25
 26 DATED: January 27, 2012

BUSTAMANTE, O'HARA & GAGLIASSO

27 By: /s/ ANDREW STEARNS

28 ANDREW STEARNS
 Co-Counsel for Plaintiff

1 DATED: January 27, 2012

OFFICE OF THE CITY ATTORNEY

2 By: /s/ SHANNON SMYTH-MENDOZA
3 SHANNON SMYTH-MENDOZA
4 Attorneys for Defendant
SJPD OFFICER BRET MOISEFF

5 DATED: January 27, 2012

6 RANKIN, LANDSNESS, LAHDE,
7 SERVERIAN & STOCK
8 By: /s/ MICHAEL C. SERVERIAN
9 MICHAEL C. SERVERIAN
10 Attorney for Defendants
11 CITY OF SANTA CLARA, STEVE
12 BURRESS, NICK RICHARDS,
13 CRAIG MIDDLEKAUFF, NICK
14 RICHARDS, CHIEF STEPHEN
15 LODGE
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